

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

MFA.No. 849 of 2001()

IC.4/1999 of ESI COURT, IDUKKI

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APPELLANTS/OPP. PARTIES

1. THE RECOVERY OFFICER, ESI CORPORATION
PUNCH DEEP BHAVAN, NORTH SWARAJ ROUND
THRISSUR 20
2. THE ASSISTANT DIRECTOR, ESI CORPORATION
PUNCH DEEP BHAVAN, NORTH SWARAJ ROUND
THRISSUR 20

BY ADV. SMT.T.D.RAJALAKSHMY, SC, ESI CORPN.

RESPONDENT/APPLICANT

P.S.PAVITHRAN, NARAYANAMANGALATHU
MANGANAM POST, KOTTAYAM

BY ADV. SRI.RAJEEV V.KURUP
SRI.AJITH KATHIRANTHARA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A. NO. 849 OF 2001

Dated this the 11th day of October, 2007

J U D G M E N T

The respondents in Insurance Case No.4/1999 on the file of the Employees Insurance Court, Idukki, are the appellants in this appeal. This appeal is filed against an order passed by the Insurance Court allowing the application filed by the respondents. The short facts necessary for disposal of the appeal are as follows:

2. The respondent-applicant was conducting toddy shop No.14 for the period from 1.4.1980 to 31.3.1981. The appellants initiated steps against the respondent for recovery of damages on account of delay in payment of contribution. Challenging that notice, respondent filed Insurance Case No.54/1986 before the ESI Court, Kollam. The ESI Court, as per order dated 25.7.1989, disposed of that application. Thereafter also, the appellants initiated steps for recovery of the same amount. The respondent then filed Insurance Case No.62/1993 before the Employees Insurance Court, Kollam. The case was subsequently transferred to Employees Insurance Court, Idukki and it was renumbered as Insurance Case No.21/1994. It was averred that the Employees Insurance Court as per order dated

14.5.1996 held that the establishment of the respondent is liable to be covered under the provisions of the E.S.I. Act and is liable to pay contribution. It was further averred that the appellants allowed the respondent to remit the contribution for the above mentioned period and interest in instalments and he paid that amount. According to the respondent there was no willful omission or any contumacious conduct on his part in paying the contribution. The delay occurred only on account of the bonafide dispute. It was also averred that the amount could not be paid on account of financial difficulties and he is not liable to pay the damage.

3. Appellants filed a written statement contending that Insurance Case No. 54/1986 was dismissed upholding the coverage. It was contended that after disposal of the above case, the Department initiated recovery proceedings against the respondent. Then he again filed Insurance Case No. 21/1994 and the same was again dismissed on 14.5.1996. It was also contended that the appellants initiated steps against the respondent for recovery of damages for the delay in payment of contribution and the respondent was afforded an opportunity for hearing also. It was contended that the financial difficulties is not a ground. There is no material to show

that the respondent was under financial difficulties. It is also contended that the contention of the respondent that the appellants allowed him to pay the amount in instalments is also not correct.

4. The Employees Insurance Court, after considering the materials on record, found that even though there was delay in payment of instalments and interest, the respondent paid the entire amount within a period of 31.1.96 to 31.3.97. Relying on the oral evidence of the respondent that he was in financial difficulties, the Employees Insurance Court took the view that there was no contumacious conduct and allowed the application and set aside the demand. Challenging that order, this appeal is filed.

5. Learned counsel appearing for the appellants argued that the amount which was payable as early as on 1984 was paid only in the year 1997 and absolutely there is no justification for the delayed payment. It is argued that in spite of the dismissal of the earlier applications, the respondent again filed the case and obtained an interim order. So he cannot be heard to contend that he was acting bonafide. Learned counsel for the respondent has argued that the appellants had permitted the respondent to pay the amount in instalments because he was in financial difficulties.

6. The respondent was a licensee of toddy shop No.14 for the period from 1.4.1980 to 31.3.1981. The appellants demanded contribution from the respondent. Challenging that order he filed Insurance Case No.54/1986. Employees Insurance Court, found that the respondent was liable to pay the contribution but set aside the order of payment on the sole ground that no notice was served on him. Thereafter, appellants again demanded contribution. Challenging that notice, respondent filed Insurance Case No. 62/1993 and the same was dismissed on 14.5.1996. According to the respondent, the appellants allowed him to pay the contribution in instalments. According to the appellants, they did not allow the respondent to pay the amount in instalments but the Department accepted whatever amount paid by the respondent and issued receipt. The Employees Insurance Court held that the respondent was bonafide challenging the question of coverage of toddy shop under the provisions of the E.S.I. Act. In **E.S.I. Corporation v. Raveendran** [2007 (2) KLT 667] a Division Bench of this Court held that the Employees Insurance Court has jurisdiction to decide the question as to whether damages imposed under Section 85B is justifiable or not. It was further held that if imposition of damages is

by way of penalty, then such damages can be imposed only in accordance with the principles applicable for imposing the penalty for failure to carry out statutory obligation. It was further held that even in case where the establishment is not a sick industrial company, damages cannot be imposed unless the party acted either deliberately or in defiance of law or was guilty of contumacious conduct. It was held that the guidelines contained in Regulation 31C are not mandatory but it can be taken as a guideline. So, I am of the view that the matter requires reconsideration. For that purpose the case has to go back.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remanded to the Employees Insurance Court for fresh disposal in accordance with law after giving both sides an opportunity to adduce evidence, if so advised. The E.I.Court is directed to take I.C. 4/1999 back to file and dispose of the same afresh, in accordance with law.

K.PADMANABHAN NAIR, JUDGE

vps

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